

DIVISION OF EMPLOYMENT SECURITY
NC DEPARTMENT OF COMMERCE

PRECEDENT DECISION NO. 23

IN RE LAMBERT
(Adopted November 15, 1991)

STATEMENT OF CASE:

The claimant filed a NEW INITIAL CLAIM (NIC) for unemployment insurance benefits effective July 29, 1990. Thereafter, the commission determined that the weekly benefit amount payable to the claimant was \$133.00, and during the benefit year established by the claimant, the maximum amount of unemployment insurance benefits payable to the claimant was \$3,458.00. An ADDITIONAL INITIAL CLAIM (AIC) was filed effective January 27, 1991.

The claim was referred to an ADJUDICATOR on the issue of claimant's eligibility for benefits under N.C. Gen. Stat. § 96-13. The Adjudicator, Kenneth C. Ray, issued a determination under DOCKET NO. 1301-00 on May 7, 1991, finding the claimant not eligible for benefits because of inadequate work search. The claimant filed an APPEAL from the ADJUDICATOR'S determination and the matter came on to be heard by an APPEALS REFEREE under APPEALS DOCKET NO. XI-QC-040T. The following individuals appeared at the hearing before the Appeals Referee: Mark A. Lambert, claimant; and Richard Sharpe, Quality Control Investigator. On August 19, 1991, Lawrence Emma, Appeals Referee, issued a decision finding the CLAIMANT NOT ELIGIBLE to receive benefits pursuant to N.C. Gen. Stat. §96-13(a)(3). The CLAIMANT APPEALED.

FINDINGS OF FACT:

1. At the time the Claims Adjudicator issued a determination in this matter, the claimant had filed continued claims for unemployment insurance benefits for the period July 29, 1990 through March 9, 1991. The claimant has registered for work with the Commission, has continued to report to an employment office of the Commission and has made a claim for benefits in accordance with N.C. Gen. Stat. §96-15(a).

2. Prior to filing his AIC which was effective on January 27, 1991, claimant worked for Kelly Services, Inc. on an assignment at Fabco Fasteners, Inc. Claimant became unemployed when there was no longer any work available for him.
3. There is no evidence in the record that claimant looked for work at any place other than Fabco Fasteners, Inc., after he filed his AIC effective January 27.
4. Claimant had an employment interview with Fabco on February 8, 1991.
5. On February 14, 1991, claimant was offered a job with Fabco and was told that he would start work on March 18, 1991 subject to his passing a pre-employment physical.
6. Claimant took a pre-employment physical and learned that he had passed it on February 26, 1991.
7. Claimant actually began work with Fabco on March 11, 1991.

MEMORANDUM OF LAW:

The Employment Security Law provides that an employed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work. N.C. Gen. Stat. §96-13(a)(3). This availability requirement has generally been viewed as an indication of a claimant's attachment to the labor force and is designed to test each claimant's attachment to the labor market. See, In re Beatty, 386 N.C. 226, 210 S.E.2d 193 (1974).

This case presents the question of whether one who is involuntarily unemployed and successfully pursues a job prospect to the point that an offer of employment has been made and accepted will be considered available for work during the period between his acceptance of the job and its commencement if he makes no other work search contacts for permanent employment.

The regulations of the DIVISION OF EMPLOYMENT SECURITY, NC DEPARTMENT OF COMMERCE provide in pertinent part:

Actively seeking work is defined as doing those things which an unemployed person who wants to work would normally do. A prima facie showing of "actively seeking work" has been established when:

During the week for which a claim for regular unemployment insurance benefits has been filed, the claimant has sought work on at least two (2) different days and made a total of at least two (2) in-person job contacts.

ESC Regulation No. 10.25(a).

Clearly, the determining factor in this case is whether claimant was actively seeking work during each particular benefit week. ESC Regulation No. 10.25(a) sets forth the requirements for a prima facie case. A prima facie case, if not contradicted by other evidence, establishes that one is actively seeking work. Absent a prima facie case, a claimant has the burden to show by other evidence that he is actively seeking work. The facts and circumstances of each particular case must be considered to determine an individual's availability for work. In re White, 93 N.C. App. 762, 379 S.E.2d 91 (1989).

Justice Lake has eloquently expressed the policy behind the Employment Security Law as follows:

. . . It does not provide for payment of benefits to one who, through fear that he may be overtaken by honest work, erects around himself all manner of conditions precedent to his acceptance of employment so as to preclude any possibility of his contact with a job. On the other hand, the statute must be construed so as to provide its benefits to one who becomes involuntarily unemployed, who is physically able to work, who is available for work at suitable employment and who, though actively seeking such employment, cannot find it through no fault of his own.

In re Watson, 273 N.C. 629, 633, 161 S.E.2d 1 (1968).

Certainly, the claimant's genuine acceptance of employment is a conclusive indication that he is doing those things which an unemployed person who wants to work would normally do and is attached to the labor force. Further, it is not unreasonable in today's complex business environment that some time might pass between the offer and acceptance of employment and its commencement.

Background and security investigations and, as in this case, physical examinations are often required by employers before an otherwise desirable job applicant is finally allowed to start work. To hold claimant ineligible in such a case would be to punish the industrious claimant who has been successful in his efforts to remove himself from the roles of the unemployed. Such a result is not the intent of the Employment Security Law.

It is concluded from the competent evidence in the record and the facts found therefrom that the claimant has failed to show that he was able and available for work for the weeks ending February 2, and February 9, 1991. During these weeks, the claimant had no assurance of imminent commencement of permanent employment. The claimant's work search, limited to seeking work with only one employer, was not sufficient to show that he was actively seeking work as required by law. It is further concluded that the claimant has shown that he was able and available for work for the weeks ending February 16 through March 9, 1991. After having obtained permanent employment to begin in the very near future, claimant's failure to continue to look for permanent work did not render him ineligible for benefits. It is noted, parenthetically, that a claimant must continue to be available for referral to suitable temporary work under such circumstances.

The claimant is, therefore, not eligible for benefits for the claim weeks ending February 2 and February 9, 1991, but eligible for benefits for the claim weeks ending February 16 through March 9, 1991.

DECISION:

IT IS NOW THEREFORE, ORDERED, ADJUDGED, AND DECREED that the decision of the Appeals Referee is **REVERSED** to the extent that claimant is **NOT ELIGIBLE** for unemployment insurance benefits for the claim weeks ending February 2 and February 9, 1991 but is **ELIGIBLE** for unemployment insurance benefits for the claim weeks ending February 16 through March 9, 1991.

COMMENTARY:

ESC Regulation No. 10.25(A) establishes a standard that a claimant may use to show that he/she is actively seeking work. Once this standard is met, no further inquiry need be made by the local office. If the standard is not met, the local office must examine the claimant's work search activity further in order to determine whether

he/she is doing those things that an unemployed person who wants to work would normally do.

In re Lambert illustrates that under some circumstances, an individual may show the Employment Security Commission that he/she is actively seeking work even though two different, in-person work search contacts on two different days have not been made each week. One who has successfully obtained permanent work to begin at some future date has made a showing of the desire to work and, under the circumstances, would not be expected to continue the same type work search as one who has no promise of employment. Along the same lines, a claimant normally employed in certain areas of skill may show an active search for work by submitting resumes rather than making in-person job contacts. That the Employment Security Commission has great latitude to make such determinations was recognized by the N.C. Court of Appeals in White v. Division of Employment Security of North Carolina, 93 N.C. App. 762, 379 S.E.2d 91 (1989).